

EOTT Energy Operating Ltd. and its workers compensation insurance carrier, Wausau Insurance Co. (jointly referred to as “EOTT”), ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge George's decision regarding T. C.'s claims for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Mr. C. has a history of frequent accidents and mishaps over the last 25 years. He now seeks workers' compensation benefits for two of those accidents. The first occurred on January 3, 1991, while he worked as a logger for Great Lakes Timber Co. The second occurred on December 13, 1998, while he was driving a tanker truck for EOTT.

Judge George held a hearing on Mr. C.'s claims on May 4, 2000, and then appointed a medical panel to consider the medical aspects of the claims. The panel submitted its report on May 14, 2003. Judge George issued his decision on March 26, 2004. In summary, Judge George ordered Great Lakes Timber Co. and its insurance carrier, Workers Compensation Fund (referred to jointly as “Great Lakes”), to pay the disability compensation and medical expenses associated with Mr. C.'s 1991 accident. Judge George ordered EOTT to pay disability compensation and medical benefits associated with Mr. C.'s 1998 accident. Furthermore, Judge George concluded that Mr. C. had established a *prima facie* claim to permanent total disability compensation as a result of injuries suffered in the 1998 accident at EOTT. Judge George therefore ordered EOTT to begin payment of subsistence benefits to Mr. C. and to elect whether it would submit a rehabilitation/reemployment plan for Mr. C..

In its motion for review, EOTT challenges Judge George's decision. Specifically, EOTT argues that Mr. C.'s claim must be evaluated under the more stringent prong of the Allen test for legal causation and, when so evaluated, fails to meet that test.

FINDINGS OF FACT

The Appeals Board finds the following facts to be relevant to EOTT's arguments. The Appeals Board also adopts Judge George's findings of fact to the extent they are consistent with these findings.

Between 1981 and 1991, Mr. C. was involved in several work and non-work accidents resulting in various injuries to his right hand, left foot, left hip, back, legs, neck, face and stomach. Then, on January 3, 1991, while working for Great Lakes, he injured his lower back in a logging accident. After medical treatment and a period of recovery, Mr. C. reached medical stability and returned to work, but with pain and a permanent low back impairment.

On December 13, 1998, while employed by EOTT, Mr. C. was driving a loaded tanker truck and towing a “pup trailer” connected to the truck with a swivel hitch. The swivel hitch allowed the trailer to rotate independently of the truck. The pup trailer overturned, causing the truck to quickly stop, resulting in deceleration similar to a fast stop for a traffic light.

Immediately after the accident, Mr. C. unhooked the trailer from the truck, helped clean up the oil that had spilled from the overturned trailer and drove the truck back to EOTT’s premises. Five days later, EOTT discharged Mr. C. because of the accident. On December 21, 1998, Mr. C. began chiropractic and medical treatment for pain in his neck, shoulders and arms

Thereafter, Mr. C. was evaluated by Dr. Chung, Dr. Moress (on behalf of Great Lakes), Dr. Knoebel (on behalf of EOTT), and by the independent panel of medical experts appointed by Judge George. With the exception of Dr. Moress, who expressed no opinion on the subject, all the medical experts found a causal connection between Mr. C.’s December 1998 accident at EOTT and his upper back and shoulder problems. Furthermore, none of the medical experts expressed the opinion that Mr. C.’s previous accidents and injuries had contributed to the additional injuries he suffered from his accident at EOTT in 1998.

DISCUSSION AND CONCLUSIONS OF LAW

The Utah Workers’ Compensation Act provides medical and disability benefits to employees injured by accident “arising out of and in the course of employment.” See §34A-2-401 of the Act. In Allen v. Industrial Commission, 729 P.2d 15, 25 (Utah 1986), the Utah Supreme Court held that the foregoing statutory language requires proof that the work accident is both the 1) “legal cause” and 2) “medical cause” of the injury for which benefits are claimed.

With respect to “legal cause,” the Court identified two alternative tests to be applied, depending on whether the injured worker suffered from a preexisting condition that contributed to the injury. If the injured worker did suffer from a preexisting contributing condition, then an unusual or extraordinary exertion is required to prove legal causation. But where there was no preexisting contributing condition, any usual or ordinary exertion is sufficient to satisfy the requirement of legal causation. Allen at 26.

In this case, Judge George refused to apply the more stringent test for legal causation because EOTT did not assert, either in its answer or during the hearing, that the test was applicable to Mr. C.’s claim. In Judge George’s view, the more stringent test for legal causation is an affirmative defense that was waived by EOTT’s failure to properly raise it.

The Appeals Board does not agree with Judge George’s analysis. In every claim, it is the injured worker’s burden to establish legal causation. The determination of which of the two alternative tests for legal causation should be applied is decided by the ALJ on a case-by-case basis, depending on whether the evidence shows a preexisting contributing condition. If the evidence convinces the ALJ that the injured worker suffered from a preexisting contributing condition, then the ALJ must apply the more stringent test for legal causation. Thus, it is improper to characterize the more stringent test for legal causation as an affirmative defense.

Because Judge George erroneously concluded that application of the more stringent test for

legal causation had been waived in this case, he did not evaluate whether the evidence supported application of that test. In particular, he did not consider whether the evidence established that Mr. C. suffered from a preexisting condition that **contributed** to his subject injuries. The Appeals Board will therefore consider such evidence.

There is no question that Mr. C. suffered from an assortment of ailments prior to the accident at EOTT. However, the medical evidence does not establish that any of these preexisting conditions contributed to the injuries Mr. C. suffered in the 1998 accident at EOTT. Most persuasively, the medical panel personally examined Mr. C. and reviewed his history, medical records and the opinions of other physicians, and then concluded that all of Mr. C.'s current cervical spine and left shoulder problems were due to the 1998 accident at EOTT.

The Appeals Board notes EOTT's argument that Mr. C., by filing a second claim attributing his injuries to the 1991 Great Lakes accident, admitted that he had contributing preexisting conditions. The Appeals Board disagrees. Mr. C. was entitled to submit alternative theories upon which he might receive benefits. His alternative theories were then subject to evaluation according to the evidence. Ultimately, the evidence failed to show any connection between Mr. C.'s previous injuries and his current cervical and shoulder problems.

In summary, Mr. C.'s claim against EOTT is not subject to the more stringent test for legal causation. Under the less stringent test that is applicable to Mr. C.'s claim, any exertion will suffice.

It is this less stringent test that Judge George actually applied to Mr. C.'s claim, although he did so for the wrong reason. In any event, Judge George correctly determined that the sudden deceleration of Mr. C.'s tanker truck in the accident of December 1998 is sufficient to satisfy legal causation under the facts of this case. EOTT has raised no other objections to Judge George's decision.

ORDER

Based on the discussion set forth above, the Appeals Board affirms the terms of Judge George's order and denies EOTT's motion for review. The Appeals Board remands this matter to Judge George to complete the adjudication of Mr. C.'s claim. It is so ordered.

Dated this 25th day of January, 2005.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch